

EXHIBIT

INTRODUCTION

Respondent Oakland Citizens for Accountable Government was a recipient committee primarily formed to support the passage of Measure F in the November 5, 1996 Oakland General Election. Measure F proposed a "strong mayor" for Oakland's city government. From 1991 to 1999, Elihu Harris was the Mayor of Oakland. Oakland Citizens for Accountable Government and Friends of Elihu Harris¹ were Mr. Harris' controlled committees.

For purposes of this Stipulation, the violations of the Political Reform Act ("the Act")² are as follows:

COUNT 1: Respondents failed to amend their statement of organization in August of 1996, to include the name of the controlling candidate in violation of Section 84103, subdivision (a).

Respondents: Elihu Harris and Oakland Citizens for Accountable Government

COUNT 2: Respondents failed to use proper sender identification on a campaign mailer sent on or about October 30, 1996, in violation of Section 84305.

Respondents: Elihu Harris and Oakland Citizens for Accountable Government

COUNT 3: Respondents failed to file a late contribution report by October 23, 1996, in violation of Section 84203.

Respondents: Elihu Harris and Friends of Elihu Harris

COUNT 4: Respondents failed to file a late contribution report by October 23, 1996, in violation of Section 84203.

Respondents: Elihu Harris and Oakland Citizens for Accountable Government

COUNT 5: Respondents failed to file a late contribution report by October 26, 1996, in violation of Section 84203.

Respondents: Elihu Harris and Friends of Elihu Harris

¹ Friends of Elihu Harris has since amended its name to Good Government Political Action Committee.

² The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations section 18000, *et seq.* All references to regulations are to Title 2, Division 6 of the California Code of Regulations unless otherwise indicated.

SUMMARY OF THE LAW

COUNT 1

Section 84101 requires every recipient committee to file a statement of organization with the Secretary of State. Section 84102, subdivision (a) states that the statement of organization shall include the committee's name, street address and telephone number, if any. The statement of organization shall also include the full name, street address and telephone number, if any, of the treasurer and other principal officers of the committee. (Section 84102, subd. (c).)

Section 84102, subdivision (e) states that the statement of organization shall include a statement of whether the committee is independent or controlled, and if controlled, the name of each candidate or state measure proponent by which it is controlled, or the name of any controlled committee with which it acts jointly. A controlled committee is one that is controlled directly or indirectly by a candidate or that acts jointly with a candidate in connection with the making of expenditures. (Section 82016.) A candidate controls a committee if the candidate, the candidate's agent, or any other committee controlled by the candidate has a significant influence on the actions or decisions of the committee. (Section 82016.)

If any information contained in a committee's statement of organization changes, an amendment shall be filed within ten days of the change, to reflect that the change has occurred. (Section 84103.)

COUNT 2

Section 82041.5 and Regulation 18435 define a "mass mailing" as over 200 substantially similar pieces of mail sent in a calendar month, which are not sent in response to an unsolicited request, letter or other inquiry. Pursuant to Section 84305, subdivision (b), if a single candidate or committee sends a mass mailing, the name, street address, and city of the candidate or committee must be shown on the outside of each piece of mail sent as part of the mass mailing, in no less than 6-point type, which shall be in a color or print which contrasts with the background, so as to be easily legible. Furthermore, if the sender of a mass mailing is a controlled committee, the name of the person controlling the committee must also be included in each piece of mail. (Section 84305, subd. (c).)

COUNTS 3 - 5

A late contribution means any contribution, including a loan, which totals in the aggregate \$1,000 or more, made to or received by a candidate, controlled committee, or a committee formed or existing primarily, to support or oppose a candidate or measure, before the date of the election, but after the closing date of the last campaign statement required to be filed prior to the election. (Section 82036.) Typically, the late contribution period is the last 16 days before an election. (Sections 84200.7 and 84200.8.)

If a committee makes or receives a late contribution, Section 84203 requires that a late contribution report be filed within 24 hours of the time the contribution is made or received. The

maker of the late contribution shall include in the report his or her full name and street address, the full name and street address of the recipient of the contribution, and the office of the candidate or the ballot measure number or letter. The recipient of the late contribution shall include in the report his or her full name and street address, and the date and amount of the late contribution. The recipient shall also report the full name of the contributor, his or her street address, occupation, and the name of his or her employer, or if self-employed, the name of his or her business.

However, Section 84203.3, subdivision (b) provides that a late contribution report, for an in-kind contribution, shall be deemed timely filed if it is received by the filing officer within 48 hours of the time the contribution is received.

SUMMARY OF THE FACTS

COUNT 1

On April 17, 1996, Respondent Oakland Citizens for Accountable Government (hereinafter OCFAG) filed a statement of organization with the Secretary of State, identifying itself as a general purpose committee domiciled in Alameda County.

Thereafter, beginning in August 1996, Respondent Harris, who was then the Mayor of Oakland, exercised both direct and indirect control over Respondent OCFAG. Respondent Harris took charge of OCFAG shortly after OCFAG failed to timely submit an argument in support of Measure F for the official city ballot. The argument was due no later than August 1996.

After taking charge of OCFAG, Respondent Harris raised virtually all of the money for OCFAG. He also significantly participated in the production of mailers sent out by OCFAG supporting Measure F, and authored letters endorsing Measure F, at least one of which was sent out as a mailer by OCFAG.

Respondent Harris also significantly participated in OCFAG indirectly through his agent, Judith Briggs-Marsh, the Mayor's Administrator. Not only was Judith Briggs-Marsh the chief fundraiser for both Friends of Elihu Harris and OCFAG, she was authorized by Harris to make expenditures for both committees.

As such, Respondent Harris directly controlled OCFAG through his participation in OCFAG decision making. He also indirectly controlled OCFAG through his agent Judith Briggs-Marsh.

Therefore, Respondent OCFAG and Respondent Harris violated Section 84103, subdivision (a), by failing to file an amended statement of organization disclosing Respondent Harris as the controlling candidate of OCFAG, within ten days of when he took control of OCFAG in August of 1996.

Once Respondent Harris took control of OCFAG, in addition to filing an amended statement of organization, he was required, as the controlling candidate, to verify all campaign statements filed thereafter by OCFAG.

COUNT 2

About one week before the November 5, 1996 election, OCFAG sent a mailer supporting the passage of Measure F to more than 25,000 voters residing in Oakland. The mailer was formatted to look like a sample ballot. The mailer identified the sender as the Yes on Measure F Committee. A Yes on Measure F Committee did not exist, therefore, this sender identification was wrong, and misleading to the public. OCFAG paid the vendor, NRP Productions, for the majority of the costs associated with producing the mailer. Thus, the true sender was Respondent Harris and his controlled committee, OCFAG.

Furthermore, the identification number and address provided on the mailer were wrong. The identification number and address disclosed on the mailer belonged to a committee controlled by Senator Don Perata.

When Senator Perata designed the mailer, at Respondent Harris' request, he used his own identification information as a "place holder," and informed Ms. Judith Briggs-Marsh of this in a memorandum dated October 17, 1996, which he sent to her along with a draft of the mailer. However, there is no evidence that Respondents intended to mislead voters by their failure to change the place holder information.

Respondent Harris and OCFAG did not replace the place holder information to include the proper sender identification on the mailer, and their failure to do so constitutes a violation of Section 84305.

COUNT 3

The late reporting period for the November 5, 1996 election was October 10, 1996 through November 4, 1996.

According to the semi-annual campaign statement for Respondent Friends of Elihu Harris, for the period ending December 31, 1996, Friends of Elihu Harris made an expenditure of \$2,000 to NRP Productions on October 22, 1996 for consulting and production fees related to the sample ballot mailer sent out by Respondent OCFAG. This expenditure by Respondent Friends of Elihu Harris was made at the behest of OCFAG and was, therefore, an in-kind contribution to OCFAG.

Respondents Elihu Harris and Friends of Elihu Harris should have filed a late contribution report within 24 hours of making the contribution. (Section 82015, subd. (b)(1) and Section 84203.) In this instance, the late contribution report should have been filed by October 23, 1996, and should have disclosed the full name and street address of the person to whom the late contribution was made, the ballot measure number or letter, and the date and amount of the late contribution.

Respondents Elihu Harris and Friends of Elihu Harris did not file the required late contribution report, and their failure to do so constitutes a violation of Section 84203, subdivision (a).

COUNT 4

Respondents OCFAG and Elihu Harris should have filed a late contribution report by October 23, 1996, for the \$2,000 in-kind contribution discussed in count three. This report should have disclosed the full names and street addresses of Respondents OCFAG and Elihu Harris, the amount of the contribution, and the full name and the street address of the contributor, Friends of Elihu Harris. (Section 84203, subd. (a).)

Respondents did not file the required late contribution report, and their failure to do so constitutes a violation of Section 84203, subdivision (a).³

COUNT 5

According to the semi-annual campaign statement of Respondent Friends of Elihu Harris, for the period ending December 31, 1996, Respondent Friends of Elihu Harris loaned \$10,000 to Respondent OCFAG, on October 25, 1996. This loan was made during the late reporting period, and therefore Respondent Friends of Elihu Harris should have filed a late contribution report by October 26, 1996, disclosing the full name and street address of the person to whom the late contribution was made, the ballot measure number or letter, and the date and amount of the late contribution.

Respondents Elihu Harris and Friends of Elihu Harris did not file the required late contribution report, and their failure to do so constitutes a violation of Section 84203, subdivision (a).

CONCLUSION

Since both committees, OCFAG and Friends of Elihu Harris, were controlled by Elihu Harris, the public was denied full access to important information about who was behind the "Yes on Measure F" campaign.

This matter consists of five counts, which carry a maximum possible administrative penalty of ten thousand dollars (\$10,000). The facts of this case, particularly the public harm associated with the violations, justify imposition of the agreed upon penalty of ten thousand dollars (\$10,000), distributed as follows:

Elihu Harris and Oakland Citizens for Accountable Government - \$6,000
Elihu Harris and Friends of Elihu Harris - \$4,000.

³ Although this late contribution report was due on October 23, 1996, because the contribution was non-monetary, the report would have been deemed timely filed if it had been received by the filing officer within 48 hours of the time the contribution was received. (Section 84203.3, subd. (b).)